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November 19, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 31, 2007

Case Number: TSO-0502

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored.

**I. BACKGROUND**

The Individual has been employed at a DOE facility in a position that requires him to hold an access authorization. In July 2006, the Individual was arrested for Driving Under the Influence (DUI) of Alcohol. He was the subject of a personnel security interview (PSI) in August 2006. During the PSI, the Individual discussed his use of alcohol and the DUI arrest. He stated that, on the night of the DUI, he stopped at four different locations and had approximately three or four drinks at each location. DOE Exhibit ("Ex.") F at 2-4. The Individual stated that after leaving the fourth location, a friend's house, he was driving home when he "pulled to the side [of the road] and fell asleep." *Id.* at 5. He added that he "passed out." *Id.* at 6. The Individual also stated that in the year prior to the PSI he had "passed out" after consuming alcohol "maybe three or four times." *Id.* at 18-19. Finally, he added that in the past year he had consumed as many as 12 to 16 drinks in one evening "probably ... two or three, four times." *Id.* at 19-20.

Based on the information discussed during the PSI, the DOE referred the Individual to a DOE consultant-psychiatrist ("Psychiatrist No. 1") for an evaluation. Psychiatrist No. 1 interviewed the Individual in September 2006 and issued a report and addenda to the report. DOE Exs. B, C, and D. Psychiatrist No. 1's report noted that the Individual's estimates regarding his alcohol consumption differed from the alcohol profile the Individual discussed during the PSI. The report attributed the discrepancies to the Individual's pattern of minimization concerning his alcohol use. DOE Ex. D. Psychiatrist No. 1 concluded the following,

There is no evidence submitted of performance problems at either work or school. However, I advised [the Individual] that if his present level of consumption [of alcohol] continues, it is inevitable that there will be additional problems in either

the legal, social, or employment realm. ... I am unable to make an official medical diagnosis of alcohol abuse, since we do not have evidence of “recurrent” problems in the legal, social or work environment. I advised [the Individual] that he should totally abstain from alcohol. He stated that it would be possible for him to totally abstain, if he had to. I would describe him as drinking alcohol ‘habitually to excess.’ ... I believe there is ... a significant defect in his judgment and reliability, given his pattern of minimization of alcohol consumption.

*Id.*

The Individual was subsequently referred to another DOE consultant-psychiatrist (“Psychiatrist No. 2”) for an additional evaluation. Following his February 2007 interview with the Individual, Psychiatrist No. 2 issued a report in which he diagnosed the Individual with Alcohol Abuse. DOE Ex. A. Psychiatrist No. 2 suspected that the Individual minimized his description of his alcohol consumption. Nevertheless, Psychiatrist No. 2 stated,

Just on the basis of what he told me and [my] review of the chart, it is very clear that his judgment and insight become quite impaired during the times when he is drinking ... I am concerned that he is not looking at this drinking as a serious problem, but instead [is] minimizing every aspect of it ... His drinking has been increasing. The consequences legally have been intensifying. His minimization has also been growing and all of these are signs of his high potential for serious alcohol abuse.

*Id.*

In May 2007, the local security office (“LSO”) notified the Individual that his July 2006 DUI arrest and the diagnoses of the two DOE consultant-psychiatrists created security concerns under 10 C.F.R. § 710.8(h) and (j). (Criteria H and J). Notification Letter, May 7, 2007. The Individual requested a hearing in this matter. *See* Individual’s Letter, May 15, 2007. The Acting Director of the Office of Hearings and Appeals (OHA) appointed me to serve as the Hearing Officer.

A hearing was held in this matter. The Individual submitted the following documents: various job performance evaluations (Indiv. Ex. 1); documents pertaining to the July 2006 DUI arrest and the relevant provisions of the state’s criminal code (Indiv. Exs. 2 and 3); the Individual’s current driving record (Indiv. Ex. 4); and information regarding the Individual’s completion of the court-ordered alcohol education program (Indiv. Exs. 5 and 6). At the hearing, the Individual, represented by counsel, presented his own testimony as well as the testimony of his mother, his cousin, a friend, three co-workers, and two substance abuse treatment professionals, to support his position that he has rehabilitated from his alcohol problem. The DOE counsel submitted documents into the record and presented the testimony of three witnesses: the Personnel Security Specialist, Psychiatrist No. 1 and Psychiatrist No. 2.

## II. THE HEARING

### A. The Individual

The Individual described the events which resulted in his arrest for DUI. Tr. at 233-40. He stated that on the day of the arrest, he woke up at about 4:30 A.M. because he had to be at work by 6:00 A.M. Tr. at 233-34. He worked until approximately 2:30 P.M. and then went home, got ready to go out, and met friends at a local community event. Tr. at 234. He stated that he had approximately three or four beers at the community event. Tr. at 235. After the event, he and his friends went to a local restaurant, where he had something to eat and drank “a beer or two.” Tr. at 236. The Individual and his friends left the restaurant at 8:30 p.m. or 9:00 p.m. and went to a local dance club, where he had another three or four beers. Tr. at 237.

The Individual left the dance club at approximately midnight and then drove to a friend’s house where he stayed until about 1:30 a.m. Tr. at 238-239. The Individual stated that he was intoxicated when he left the dance club, stating, “I probably had enough where I probably shouldn’t have been driving, but not to a point where I was [belligerent] or anything like that.” Tr. at 238. The Individual defined intoxication as being above the legal limit. Tr. at 264. He stated that it typically takes “four or five” drinks for him to feel intoxicated. *Id.* When asked why he drove from the dance club to his friend’s house despite feeling intoxicated, the Individual testified that he was already feeling the effects of the alcohol and intended to stop by his friend’s house for a short time and then leave. Tr. at 266.

The Individual stated that he decided to drive home from his friend’s house because he “was tired” and was “just ready to go home ... go to sleep.” Tr. at 239. He added, “it wasn’t a good judgment call on my part to do that.” *Id.* He stated that there was probably someone at his friend’s house who could have driven him home had he asked. *Id.* The Individual added that the number of beers he consumed that night is an “approximation” and that he was not “actually keeping track” of the amount of alcohol he consumed. Tr. at 238. The Individual stated that his home was about 20 minutes away from his friend’s house. Tr. at 268. When asked whether he thought he could make it home, the Individual stated, “I don’t know.” *Id.*

According to the Individual, he “learned a great deal of lessons” from the DUI arrest. He stated,

I learned one, that I didn’t make a good decision that night. I was intoxicated, that I could have endangered my life or someone else’s life. I have some close family, my brother has a child and I help take [care of] him and it’s kind of brought me to the realization that I could have really hurt – I could have hurt him if they would have been on the road at the same time. I felt terrible about it, I felt angry at myself about it. [It is] the type of thing you wish you could change but I couldn’t change it.

Tr. at 241. He also discussed the impact the DUI arrest had on him. According to the Individual, the DUI arrest had a significant impact on him. He stated,

[T]he fines and the conviction and the restricted license is one part of it, the impact. The other impact as far as my job, losing a job that I was making a fairly decent living on, just being kind of thrown out there with no job, just waiting around as far as the appeal process where we're here today, finding another job, you know, just dealing with this in general.

Tr. at 256.

The Individual stated that in September 2006 he pled guilty to the DUI in order to accept responsibility for what he had done. Tr. at 243. He was fined \$500, \$250 of which was suspended. *Id.* He was sentenced to 60 days in jail, all of which was suspended contingent upon his successful completion of twelve months of probation. Tr. at 243-44. The Individual stated that his driver's license was suspended for 12 months, but he was permitted to obtain a restricted license for that period. Tr. at 245. He also was required to complete 50 hours of community service and enter the court's mandatory alcohol education program. *Id.*

The Individual stated that he "learned a great deal" from the mandatory alcohol education program. Tr. at 250. He stated,

Once I went [to the program], we did like a personal evaluation of ourselves ... first I learned the effects [that] alcohol has, as far as your family, social life, work, you know, schooling ... I learned how it affects you as far as financially, how it could affect you. Then we started going more into depth of what the consequences were drinking and driving ... what could happen as far as ... your work, family, social, education, financial and then ... the consequences as far as the legal system. Then we learned ... what you would have to live with if you seriously hurt or killed someone.

Tr. at 250-51. He stated that alcohol consumption may cause a problem for him. *Id.* He stated that he would never again go out and drink as many as 12 beers. *Id.* He stated that although both DOE psychiatrists recommended he stop drinking alcohol, he has not been totally abstinent. Tr. at 253. He believes that he will be fine if he limits his alcohol consumption to one or two drinks. He testified, "I never [drank] to the point of being like that [on the night of the DUI] and I never intend to drink like that again." *Id.* The Individual stated that following the mandatory alcohol education program, he drinks less. He stated that he drinks one or two beers and drinks "very seldom. I mean, maybe once, twice a month ...." Tr. at 254. He also stated that he does not go out as often. Tr. at 255. He added that the last time he had consumed any alcohol was approximately one month prior to the hearing when he drank two beers. Tr. at 277.

The Individual also testified generally about his history of alcohol use. He stated that he began drinking alcohol in his senior year of high school and that his drinking then was minimal. Tr. at 269. He stated that his consumption increased when he turned 21 and was able to frequent bars. Tr. at 270. He stated that at time he drank "no more than six, seven" beers. Tr. at 271. The Individual stated that since he was 21, he had been intoxicated (or consumed four to five beers) "maybe once every month or two or something like that." Tr. at 272. He stated that the last time

he drank to intoxication was “last year ... after [the] DUI.” *Id.* However, the Individual also stated that since that occasion he has had four or five drinks “maybe once or twice.” Tr. at 273.

When asked about how often he had “passed out” after drinking, the Individual stated that in his conversations with friends, “going to sleep and passing out, it’s kind of the same thing. When [the personnel security specialist] asked me [during the PSI] when I passed out, I meant when I went to bed.” *Id.* The Individual then said that he did not feel like alcohol was a factor in his “passing out.” *Id.* He stated, “I mean, if I wanted to stay up, I could stay up a bit longer. I just got up and said I’m going to bed.” *Id.* When asked why he stated during the PSI that he “passed out” three or four times after drinking alcohol if all he meant was that he went to sleep, the Individual first attributed his answer to “nervousness” during the interview, then stated that it was “an approximation” of how many times he passed out, and finally admitted that alcohol would have been a factor. Tr. at 274-275.

## **B. The Individual’s Family and Friends**

### **1. The Individual’s Mother**

The individual’s mother testified that the Individual lives at home. Tr. at 185. She described her son as “real dependable,” “good,” and “trustworthy.” Tr. at 186. The Individual’s mother stated that she was aware that the Individual drinks alcohol, but was not aware of the Individual driving after consuming alcohol. Tr. at 188. She also testified that on one occasion, after the Individual’s DUI, she had seen him intoxicated, although “he wasn’t drunk, drunk.” Tr. at 189. She later said that he was not intoxicated, but “just had something to drink.” Tr. at 190. The Individual’s mother stated that the Individual does not go out as much since the DUI. Tr. at 191. She stated that the Individual talked to her about attending the mandatory alcohol education program and “he just said that they talked about the effects of [alcohol] and the consequences of driving under the influence.” Tr. at 192. Finally, the Individual’s mother testified that she does not believe that the individual has “a problem” with drinking, nor would he drink and drive again. Tr. at 193.

### **2. The Individual’s Cousin**

The Individual’s cousin is thirty-five years old. Tr. at 113. She testified that they are very “close” – they talk daily and see each other “probably weekly.” Tr. at 114. She described the Individual as having an excellent character and added “he’s just a good person.” Tr. at 115. She also stated that the Individual has good judgment. Tr. at 120.

The cousin noted that the Individual was “very upset” after his DUI. Tr. at 116. She stated that before the DUI the Individual drank socially. Tr. at 117. Now, the Individual is much more aware of his alcohol consumption. Tr. at 118. The Individual realizes that he made a mistake by driving while intoxicated. Tr. at 119. The cousin testified that she has not seen him intoxicated since the DUI, although the individual has not stopped drinking entirely. Tr. at 119, 121. The last time she saw the Individual consume alcohol was in June 2007. Tr. at 124.

3. The Individual's Friend

The friend is twenty-six years old and has known the Individual for his entire life. Tr. at 127. They have grown closer over the past two years. *Id.* He has seen the Individual two to three times per week over the past two years. *Id.* He said that the Individual is "good with his family" and is a "real nice person." Tr. at 128. The friend added that the Individual tends to his elderly grandparents. Tr. at 129.

The friend stated that the DUI caused a "big change" in the Individual's life. Tr. at 133. Before the DUI, the Individual "was drinking a whole lot more" than he drinks now. Tr. at 130. The friend stated that, prior to the DUI, the Individual would typically consume six to eight beers over the course of an evening. Tr. at 130-131. He stated that the Individual became intoxicated "maybe once every month or two." Tr. at 131. When asked whether he ever told the Individual he was drinking too much alcohol, the friend replied, "I think everybody mentioned it to him a little bit when they'd see him." Tr. at 133. He stated that the DUI made the Individual realize that he had a problem with alcohol. *Id.* He stated that if the Individual drinks now, he drinks "a couple of beers." The friend added that, although the Individual still drinks socially, he has not seen the Individual intoxicated since the DUI. Tr. at 134. The friend stated that he believes the Individual has learned effects of alcohol on his life from his DUI experience and that he regrets his actions. Tr. at 135.

**C. The Individual's Co-Workers**

1. Co-Worker No. 1 – The Individual's Supervisor

The supervisor stated that he conducted several performance reviews on the Individual and his work was satisfactory. Tr. at 96-98. In one of his reviews, the supervisor noted that the Individual's work "is a huge benefit to the company." Tr. at 98. Based upon the Individual's work performance, the supervisor believes that the Individual has "very good judgment." Tr. at 103. He stated that he did not see any signs that the Individual abused alcohol. Tr. at 97. He added, however, he does not interact with the Individual socially outside of work. Tr. at 102.

2. Co-Worker No. 2

Co-worker No. 2 stated that he had approximately three years of daily on-the-job contact with the Individual. Tr. at 105. He never smelled alcohol on the Individual or saw anything that made him believe the Individual was impaired. Tr. at 106. The co-worker stated that the Individual never discussed his alcohol use. Tr. at 110. He characterized the Individual as "nice," "conscientious," "dependable," and "intelligent." Tr. at 107. Co-worker No. 2 stated that he and the Individual do not socialize outside of work. Tr. at 109. They did attend an office holiday party where the company provided alcohol. According to the co-worker, the Individual had "one or two" drinks, but was not intoxicated. Tr. at 107-08.

3. Co-Worker No. 3

Co-worker No. 3 works in the Individual's former department, where he saw the Individual approximately every two weeks. Tr. at 144. The co-worker stated that the Individual was "very responsible and [a] hard worker." Tr. at 145. He also agreed that the Individual has "good judgment." *Id.*

Co-worker No. 3 socialized with the Individual outside of work. *Id.* He has never seen the Individual intoxicated. Tr. at 146. He stated that the Individual typically consumes "maybe four or five beers." *Id.* The co-worker does not feel that the Individual has a problem with alcohol. Tr. at 147. Co-worker No. 3 stated that since the DUI, the most alcohol he has seen the Individual consume is "maybe a couple [of] beers." Tr. at 148. He added that, since his DUI arrest, the Individual knows that he has to "be a little more responsible. . . ." *Id.*

**D. Substance Abuse Treatment Professionals**

1. The Director of the Mandatory Alcohol Education Program

The director of the court-ordered alcohol education program the Individual attended testified that the Individual's initial interview for the program was in September 2006. Tr. at 158. The Individual began the required alcohol education classes in January 2007 and successfully completed the program in April 2007. *Id.* The director stated, "it is a 20-hour class over ten weeks and it is pretty intensive in terms of alcohol education and getting [the attendees] to look at how alcohol has affected their lives and what they can do to change that in the future." Tr. at 160.

The director stated that the Individual complied with the requirements of the program. She stated,

[The Individual] attended all of the sessions, ten of the ten, he completed all assigned homework, his participation and attitude were considered fair, his insight into his understanding of his drinking and driving problems and application to his own life were noted as improvements ... He was not drinking at the end of the class, the change in drinking and driving behavior ... was appropriate and the instructor did feel that he absorbed and understood the basic information that was taught.

Tr. at 171. Finally, the director added that the program sometimes refers individuals for further treatment or counseling if the instructor deems it necessary, but that no such referral was made for the Individual. Tr. at 172.

2. The Substance Abuse Therapist

The substance abuse therapist testified that she evaluated the Individual. Tr. at 177. She stated that she was asked to determine whether the Individual had an alcohol abuse disorder and required treatment beyond his attendance at the court-ordered alcohol education program. Tr. at

178. Based on her evaluation of the Individual, she determined that he did not require any treatment beyond what he received in the court-ordered program he attended. *Id.*

## **E. The DOE Consultant-Psychiatrists**

### **1. Psychiatrist No. 1**

Psychiatrist No. 1 stated that based on his evaluation of the Individual, he determined that the Individual was a user of alcohol habitually to excess. He stated,

[I]t's not a psychiatric diagnosis but by [the Individual's] account of numbers of times he has been consuming a fair amount of alcohol, beginning before high school graduation when his drinking was against the law, and his [description of his] use of alcohol stated about four times he consumed so much alcohol that he passes out. A number of these times – and in conjunction with his attitude about that alcohol consumption, led me to be quite concerned about his judgment in how he used alcohol, when and how much, and the warning signs that he was oblivious to and continued to drink on occasions in addition to the indexed incident of July [2006] that led to the DUI.

Tr. at 205-206. Psychiatrist No. 1 defined drinking “habitually to excess.” He stated, “if an individual repeatedly drinks to that level that there would have been a finding of legal intoxication had testing been done, then in my opinion, that’s habitually to excess.” Tr. at 223. Psychiatrist No. 1 stated that the Individual had pattern of minimization concerning his alcohol consumption. Tr. at 206.

Regarding the Individual’s self-awareness regarding his alcohol use, Psychiatrist No. 1 stated, “he basically, to me, stated that he didn’t see his alcohol [use] causing a problem and at that time that I saw him, he really had no plans of changing his alcohol consumption at all ....” Tr. at 209. Psychiatrist No. 1 added that the fact that the Individual did not intend to change his alcohol consumption was of concern. Tr. at 221. He also stated that he recommended that the Individual completely abstain from consuming alcohol, adding, “my concern as a physician [was] that he was on a collision course, he was heading for disaster if he did not change his ways.” Tr. at 224.

Psychiatrist No. 1 stated that in order to find that an individual has rehabilitated or reformed from an alcohol problem, self-awareness regarding the alcohol problem and a period of extended abstinence from alcohol are key. Tr. at 225. Regarding the recommended length of the period of abstinence, he added that “there’s an unofficial understanding of approximately one year ....” *Id.*

### **2. Psychiatrist No. 2**

Psychiatrist No. 2 diagnosed the Individual with “alcohol abuse, episodic, which means he drinks occasionally but when he does so, he’s often intoxicated.” Tr. at 67. He added, “basically I’m saying that he is under the influence [of alcohol] sufficiently to meet the criteria for the DSM IV diagnosis, which means he’s often times intoxicated when he drinks.” Tr. at 68. Psychiatrist No.



2 added that it is “very typical” for individuals who abuse alcohol to minimize their use to friends and family and to demonstrate a lack of self-awareness concerning their alcohol use. *Id.* The psychiatrist described the Individual’s alcohol consumption as episodic, binge drinking, stating “I like to define it in terms of drinking that’s sufficiently frequent and [the person is] sufficiently intoxicated that we have a problem. Anytime there’s a DUI involved, we really have a problem.” Tr. at 78.

Psychiatrist No. 2 believed that the Individual “chooses to become intoxicated in that he doesn’t really set ... any obstacles to prevent him from over-drinking ... that indicates that he is allowing his mind to be wiped out by this drinking practice.” Tr. at 83. The psychiatrist stated that the Individual “really didn’t think he was drinking excessively and it was only because of external factors that he was involved – you know, because of the arrest that he was involved in the counseling.” Tr. at 88. He also stated that the Individual “really didn’t think he had any kind of problem and it seems to me that he was not really the kind of person that was going to easily stop [drinking alcohol] altogether.” Tr. at 70. He added that his recommendation for the Individual was total abstinence from alcohol. *Id.* Regarding rehabilitation, the psychiatrist stated that when someone has an alcohol problem, he needs to see “a minimum of six months of complete sobriety ... total abstinence from alcohol.” Tr. at 92.

### III. STANDARD OF REVIEW

The regulations governing the Individual’s eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, “Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.” An individual is eligible for access authorization if such authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). “Any doubt as to an individual’s access authorization eligibility shall be resolved in favor of the national security.” *Id.* See generally *Dep’t of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the “clearly consistent with the interests of national security” test indicates that “security clearance determinations should err, if they must, on the side of denials”).

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” *Id.* § 710.27(a).

#### IV. ANALYSIS

The derogatory information concerning Criteria H and J centers on the Individual's July 2006 arrest for DUI and the psychiatrists' diagnoses. Criterion H concerns conduct tending to show that the Individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J concerns conduct indicating that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Given the nature of the DUI arrest, Psychiatrist No. 1's opinion that the Individual suffered from a defect in judgment or reliability due to alcohol use, and Psychiatrist No. 2's diagnosis that the Individual suffered from Alcohol Abuse, the LSO had more than sufficient grounds to invoke Criteria H and J.

##### A. Criteria H and J - Alcohol Use

There is a discrepancy between the opinion of Psychiatrist No. 1 and the diagnosis of Psychiatrist No. 2. The difference appears to lie in the psychiatrists' interpretation of whether the Individual has had "recurrent" legal, social, or employment problems. Psychiatrist No. 1 interpreted the word "recurrent" literally, while Psychiatrist No. 2 looked at the potential for future problems in making his diagnosis. This discrepancy is immaterial, however, because both psychiatrists agree that the Individual has a defect in judgment attributable to his alcohol consumption. They also agree that the Individual should maintain a sustained period of abstinence to demonstrate adequate rehabilitation or reformation.

The DOE regulations do not specify what constitutes use of alcohol "habitually to excess." Guideline G of the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information addresses the issue of alcohol consumption. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House ("the Adjudicative Guidelines"). Guideline G cites as a security concern "the habitual or binge consumption of alcohol to the point of impaired judgment." Guideline G, ¶ 22(c). Guideline G also sets forth examples of conditions that may serve to mitigate security concerns involving alcohol. Guideline G, ¶ 23. According to Guideline G, such conditions include (i) the passage of sufficient time so as to indicate that the problematic alcohol use "is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," and (ii) a pattern of responsible use. *Id.*

There can be no dispute that the Individual was a user of alcohol habitually to excess. On the night of the DUI, he had consumed between 12 and 16 drinks. Based on his own statements in the PSI, to the psychiatrists, and at the hearing, the Individual would drink four or five drinks, and as many as 12 to 16 drinks. By his own testimony and that of his witnesses, he would drink to intoxication once every month or two.

## **B. Mitigating Factors**

The Individual admitted that his actions on the night of his DUI were a lapse in judgment. He testified that he learned valuable lessons during the mandatory alcohol education program and intended not to drink to excess in the future. He stated that he currently drinks one or two drinks on occasion, and his friend and Co-Worker No. 3 testified that the Individual now only drinks one or two beers when they go out. The Individual's witnesses testified that he has changed since the DUI. In addition, he successfully completed the requirements of the court-ordered alcohol education class.

The Individual's reduction in his alcohol consumption, while certainly positive, is insufficient to mitigate the security concerns in this case. I am not convinced that the Individual has a complete understanding of the gravity of the concerns raised by his alcohol use. On the night of the DUI, the Individual was aware of the fact that he should not be driving after having the number of drinks he had. Despite this, he drove while intoxicated twice – once from the dance club to his friend's house and again when he tried to drive home – endangering himself and others. When asked about the impact the DUI arrest had on him, the Individual talked about the consequences regarding his restricted license and issues surrounding his employment. Although he stated that he was aware that he could have injured someone, such as a family member, his statements focus solely on his decision to drive home after drinking and not on his general pattern of alcohol consumption. Rather, he stated that he learned in the alcohol education program that he there was a "possibility of a problem" he "could" have with alcohol.

Throughout his interviews with the personnel security specialist and the two psychiatrists, the Individual minimized his alcohol consumption and its consequences and insisted that he did not have a problem with alcohol. He continued this pattern of minimization at the hearing by maintaining that his statements during prior interviews regarding his total alcohol consumption the night of the DUI were merely approximations, and by attempting to sidestep the issue of the number of times he has passed out due to alcohol consumption and the number of times he has been intoxicated.

I am also concerned by the fact that the Individual has not attempted to establish a period of abstinence from alcohol. The Individual continues to drink alcohol, despite the serious consequences of the DUI arrest and the recommendations of the two psychiatrists that he should abstain. That the Individual would choose to ignore those recommendations in light of the problems created by his drinking raises questions regarding his judgment about his alcohol consumption. However, even if the Individual had demonstrated a clear understanding of the seriousness of his alcohol consumption, less than a year has passed (only approximately four months as of the date of the hearing) since he completed the alcohol education program, where by his testimony he gained insight into his drinking habits. Consequently, insufficient time has passed for the Individual to have established a pattern of responsible use of alcohol, particularly in view of the Individual's high rate of intoxication during the years preceding the DUI arrest.

After assessing the record in this case, including the character and demeanor of the Individual and the other witnesses at the hearing, I conclude that, despite the differences in the opinions of the two DOE consulting-psychiatrists, the Individual was, at least, a user of alcohol habitually to

excess. I am unable to conclude that the security concerns raised by the Individual's use of alcohol and his DUI arrest set forth in the Notification Letter have been adequately resolved.

## **V. CONCLUSION**

Upon consideration of the record in this case, I find that there was evidence that raised security concerns regarding the Individual's eligibility for a security clearance under Criteria H and J. I also find insufficient evidence in the record to fully resolve those concerns. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Diane DeMoura  
Hearing Officer  
Office of Hearings and Appeals

Date: November 19, 2007